

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: WYATT & McALISTER PLLC

**CHAPTER 7 PROCEEDING
CASE NO. 09-04354-ee**

**DEBTOR'S RESPONSE TO EMERGENCY MOTION TO DISMISS
CHAPTER 7 VOLUNTARY PETITION FILED BY MARY McALISTER**

COMES NOW Debtor Wyatt & McAlister PLLC, through counsel, and files this its Response to the Emergency Motion ["the Motion"] to Dismiss Chapter 7 Voluntary Petition filed by Mary McAlister ["McAlister"], and in support thereof would respectfully show unto this honorable Court as follows, to-wit:

FIRST DEFENSE

The Motion fails to state a claim upon which relief can be granted against the Debtor.

SECOND DEFENSE

The relief sought by McAlister in the Motion is barred by the affirmative defenses of waiver, estoppel, ratification, affirmative resignation, and constructive abandonment and withdrawal from Wyatt & McAlister, PLLC.

THIRD DEFENSE

The relief sought by McAlister should be dismissed due to her own negligent conduct.

FOURTH DEFENSE

The relief sought by McAlister should be denied because of her actions causing a breach of contract lawsuit to be filed against Wyatt & McAlister, PLLC and for which there are not assets of financial wherewithal to satisfy a near certain judgment against Wyatt & McAlister, PLC.

FIFTH DEFENSE

The Debtor reserves the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery.

ANSWER

And now, without waiving any denials and affirmative defenses asserted hereinabove, the Debtor responds to the allegations contained in McAlister's Motion, paragraph by paragraph. Unless specifically admitted, the allegations of the Motion are denied.

1. The Debtor admits that a Mississippi Certificate of Formation was filed with the Mississippi Secretary of State creating Wyatt & McAlister PLLC on September 22, 2008. The remaining allegations contained in Paragraph No. 1 of the Motion are denied.

2. The Debtor admits that Wyatt & McAlister PLLC has no operating agreement. The remaining allegations contained in Paragraph No. 2 of the Motion are denied. Further, the Debtor would submit that Movant McAlister resigned from Wyatt & McAlister and wrongfully sought to dissolve said entity on January 9, 2009 by simply walking out the door leaving all financial obligations and debts behind as evidenced by the copy of letter attached hereto as Exhibit "A" and incorporated by reference.

3. The Debtor denies the allegation contained in Paragraph No. 3 of the Motion. In fact, Derek A. Wyatt, the remaining member of Wyatt & McAlister PLLC after the "resignation" of Movant McAlister, is authorized under §79-29-803(1) of the Miss. Code Ann. (1972) as amended, to "wind up the limited liability company's affairs." Moreover, as evidenced in Exhibit "B" attached hereto and incorporated by reference, Movant McAlister, in her Response to the First Amended Application for Judicial Dissolution pending in the Chancery Court of Madison County, Mississippi, in Cause No. 2009-90-B, "avers that Wyatt & McAlister has virtually no assets, and there are insufficient funds to pay Wyatt & McAlister's present creditors." (See Exhibit "B" at ¶28)

4. The Debtor admits that Special Master Robert Sneed conducted and/or is conducting an evaluation to determine and identify Wyatt & McAlister PLLC's assets due to the Nutt entities replevin action. The Debtor also will submit that a hearing is set for December 18, 2009 in the

Chancery Court of Madison County, Mississippi to hear Wyatt & McAlister's Motion to Intervene in the Nutt replevin action, as the real party in possession, Wyatt & McAlister's Motion to Dismiss and Nutts' Motion to Appoint Special Master as evidenced by Exhibit "C" attached hereto and incorporated by reference. Finally, the Debtor would submit that by Order of the Chancery Court of Madison County, Mississippi, Special Master Robert Sneed was ordered to evaluate and determine whether the property subject to the Nutt entities replevin action is the same property subject to Wyatt & McAlister's Judicial Dissolution action, as evidenced by Exhibit "D" attached hereto and incorporated by reference. All remaining allegations contained in Paragraph No. 4 of the Motion are denied, including the baseless request for sanctions and attorney's fees against Derek A. Wyatt and the undersigned.

5. The Debtor denies the allegations of the last, unnumbered addendum paragraph beginning "ACCORDINGLY." Further, the Debtor respectfully requests that this honorable Court award undersigned counsel all attorney's fees and costs incurred in defending this specious Motion.

SIXTH DEFENSE

The Debtor expressly denies each and every allegation or claim for relief whereby McAlister seeks to impose liability against the Debtor or to obtain recovery of money, property or other relief from the Debtor, whether herein specifically denied or not.

WHEREFORE, PREMISES CONSIDERED, Debtor Wyatt & McAlister PLLC prays that its Response be received and filed and that upon consideration thereof the claims of Movant McAlister will be dismissed in their entirety and with prejudice. Moreover, the Debtor would show that McAlister's claims are unjustified, and to the extent allowed by law, the Debtor is entitled to recover from McAlister all attorney's fees and costs expended in connection herewith. Further, the Debtor denies that McAlister is entitled to any relief whatsoever in the premises, and prays for any and all other relief, either general or specific, to which it may be entitled in the premises.

DATED this the 15th day of December, 2009.

Respectfully submitted,

WYATT & McALISTER PLLC

By: s/ Vann F. Leonard
Vann F. Leonard, Attorney for the Debtor

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CERTIFICATE OF SERVICE

I hereby certify that I have this date caused to be mailed by prepaid First Class United States Mail a true and correct copy of the above and foregoing Response electronically filed with the Clerk of this Court using the ECF system, to the following persons named below:

Lawrence E. Allison, Jr., Esquire - llallison@brunini.com
Brunini, Grantham, Grower & Hewes, PLLC
Post Office Drawer 119
Jackson, Mississippi 39205

Office of the United States Trustee
Attention: Ronald H. McAlpin, Esquire - ronald.mcalpin@usdoj.gov
100 West Capitol Street, Suite 706
Jackson, Mississippi 39269

J. Stephen Smith, CPA - trustee1@smithcpafirm.com
Chapter 7 Case Trustee
5 Old River Place, Ste 107
Jackson, Mississippi 39202

DATED this the 15th day of December, 2009

s/ Vann F. Leonard